

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: BPS DIRECT, LLC and CABELA’S,
LLC, WIRETAPPING

MDL NO. 3074
2:23-md-03074-MAK

**PLAINTIFFS’ NOTICE OF ELECTION TO STAND ON CONSOLIDATED CLASS
ACTION COMPLAINT, AND REQUEST FOR ENTRY OF FINAL ORDER**

On December 5, 2023, the Court entered an order dismissing Plaintiffs’ claims against Defendants BPS Direct, LLC and Cabelas, LLC for lack of standing, but granting Plaintiffs Cornell and Montecalvo leave to file an amended complaint by January 5, 2024. ECF No. 82 at 3.

Plaintiffs Cornell and Montecalvo maintain that the allegations in their Consolidated Class Action Complaint (ECF No. 53) demonstrated their standing under Article III. Plaintiffs Cornell and Montecalvo therefore intend to stand on the allegations in their consolidated complaint for purposes of appeal. For this reason, Plaintiffs Cornell and Montecalvo will not file an amended complaint by January 5, 2024, and they do not seek to extend that deadline.

Under the Third Circuit’s precedents, the order of December 5, 2023, was not a final, appealable order. *See Weber v. McGrogan*, 939 F.3d 232, 237 (3d Cir. 2019) (“a dismissal without prejudice and with leave to amend isn’t a final order”).

Accordingly, although Plaintiffs Cornell and Montecalvo disagree with the Court’s decision, Plaintiffs Cornell and Montecalvo respectfully request that this Court enter a final order so that they may begin their appeal.

Date: December 15, 2023

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